

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 428 069
Issued to: Nicholas A. ERNSER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2091

Nicholas A. ERNSER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 24 May 1976, an Administrative Law Judge of the United States Coast Guard at San Francisco, California suspended Appellant's license for one month outright plus three months on twelve months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as pilot on board the United States SS GULFKNIGHT under authority of the license above captioned, on or about 27 May 1975, Appellant, while navigating said vessel in Carquinez Strait, negligently allowed said vessel to collide with the Ozol pier, a properly chartered fixed structure, in Martinez California.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and the specification.

The Investigating Officer introduced in evidence the testimony of four witnesses, as well as fourteen exhibits.

In defense, Appellant offered in evidence his own testimony and one exhibit.

After the conclusion of the hearing, the Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all licenses issued to Appellant, for a period of one month outright plus three months on twelve months' probation.

The entire decision and order was served on 24 May 1976. Appeal was timely filed on the same day.

FINDINGS OF FACT

The SS GULFKNIGHT is a U.S. tank vessel, enrolled and licensed for the coasting trade. The GULFKNIGHT is required to be under the direction and control of a pilot licensed by the Coast Guard when underway in U.S. waters except when on the high seas. 46 USC 364.

The Appellant is the holder of a Coast Guard license to serve as master for steam or motor

vessels not over 1,000 gross tons upon bays, sounds, rivers, and lakes other than the Great Lakes; as third mate, ocean, steam or motor vessels, any gross tons; as a first class pilot on San Francisco Bay and its tributaries to Stockton; and a radar observer.

The Appellant was engaged to pilot the GULFKNIGHT from the Phillips Amorcol Wharf in Carquinez Strait to San Francisco Bay proper. In order to proceed outbound it was necessary that the vessel safely pass two other tankers in the Strait, the SS EXXON NEWARK and the SS HOUSTON. The EXXON NEWARK was to take the GULFKNIGHT's place at the Phillips Amorco Wharf while the HOUSTON was bound from sea to the Shell Martinez Oil Wharf. The GULFKNIGHT successfully passed the EXXON NEWARK but was unable to safely pass between the HOUSTON and the Ozol Wharf as the Appellant had planned. The GULFKNIGHT collided with the Ozol pier at about 1958, 27 May 1975 causing damage to the vessel and the pier.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the exercise of jurisdiction by the Coast Guard in this case is unjust and unfair in view of other circumstances and situations where jurisdiction is lacking. It is also contended that at most jurisdiction exists only as to the Appellant's pilotage endorsement and not to other licenses held by Appellant. Further, it is urged that the Administrative Law Judge erred in finding the Appellant guilty of negligence.

APPEARANCE: Stanley V. Cook, Esq. of Derby, Cook, Quinby and Tweedt, San Francisco, California.

OPINION

I

Appellant argues that the Coast Guard lacks jurisdiction over many situations which may involve vessels of the same kind and size as the vessel involved here and, thus, it is unjust and unfair to exercise jurisdiction in this case even though such jurisdiction uncontestedly exists by way of federal statute. The GULFKNIGHT, enrolled and licensed for coastwise trade, subject to the Navigational laws of the United States, and not on the high seas, but underway in the navigable waters of the United States, was required to be under the direction and control of a pilot licensed by the Coast Guard pursuant to 46 USC &364. It was under the direction and control of such a pilot, the Appellant, that the GULFKNIGHT collided with the Ozol pier on 27 May 1975. 46 USC §239 authorizes the suspension or revocation of licenses issued by the Coast Guard for

. . . acts in violation of any of the provisions of title 52 of the Revised Statutes or any of the regulations issued thereunder . . . and all acts of incompetency or misconduct . . . committed by any licensed officer acting under authority of his license . . .

The jurisdictional authority of the Coast Guard in this case is clear.

II

Appellant further argues that jurisdiction exists only over the pilotage endorsement of Appellant's license and not over the endorsement for master and third mate. Appellant is correct in that three separate licenses could be issued for each of Appellant's separate qualifications as pilot, master and mate. This situation, however, could not exist for any one person at any one time as federal regulation requires that the old license be surrendered upon the issuance of a new license or a raise in grade. (46 CFR §10.02-7(b)). Master, mate and pilot are classified as deck officers and qualified person are issued only one "deck license". To qualify as a pilot the applicant most often will have previously qualified as mate and/or master. In such case his license as mate or master will be endorsed with the pilotage qualification. If the applicant is not licensed as a mate or master, he will receive a deck license as a pilot. Endorsements on an individual's licenses reflect the additional positions for which he is qualified to hold a license. Regrettably such endorsements themselves are often referred to as separate distinct licenses. Regardless of Appellant's qualifications and experience he was entitled to hold only one federal license as "Master". See Appeal Decision 700 (CHRISTENSEN). The charge presented against the Appellant was directed at his capacity as a deck officer acting under the pilot endorsement of his license. It is evident that proof of the charge of negligence as contained herein casts serious doubt on Appellant's entitlement to the privilege of holding any deck license of any description.

III

Appellant's assertion that the facts of this case do not support a finding of negligence is not will taken. The acts and omissions of the Appellant, not the "faults and errors of the EXXON NEWARK" placed the GULFKNIGHT in the dangerous position that led to the collision with the pier. As I have previously stated, the issue before an Administrative Law Judge is the negligence of the respondent, and the fault of others, even if proved to be a greater fault, can not be used to excuse fault on the part of the respondent. The alleged faults of others, if within the jurisdiction of the Coast Guard, is left to other proceedings. See Appeal Decision 2012 (HERRINGTON) and 2052(NELSON).

CONCLUSION

In light of the foregoing I find that there is sufficient evidence of a reliable and probative nature to support the specification and the charge alleging negligence on the part of Appellant's. I further find that jurisdiction exists under 46 U.S.C. 239 and that suspension of Appellant's license in its entirety was proper.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 24 May

1976, is AFFIRMED.

E. L. PERRY
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 31st day of Jan. 1977.

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